

**SUPREME COURT MINUTES
WEDNESDAY, JUNE 6, 2001
LOS ANGELES, CALIFORNIA**

The Supreme Court of California reconvened in its courtroom in the Ronald Reagan State Office Building, Third Floor, South Tower, 300 South Spring Street, Los Angeles, California, on June 6, 2001, at 9:00 a.m.

Present: Chief Justice Ronald M. George, presiding, and Associate Justices Mosk, Kennard, Baxter, Werdegarr, Chin, and Brown.

Officers present: Frederick K. Ohlrich, Clerk and Harry Kinney, Marshal.

- S085224 Delaney Geral Marks, Petitioner
 v.
 Alameda County Superior Court, Respondent
 The People, Real Party in Interest
 Cause called. Shonda Hollinger, Habeas Corpus Resource
 Center, argued for Petitioner.
 Sharon Wooden, Deputy Attorney General, argued for Real Party
 in Interest.
 Mary Jane Mona, Habeas Corpus Resource Center replied.
 Cause submitted.
- S078199 Safeco Insurance Company, Appellant
 v.
 Robert S. et al., Respondents
 Cause called. Kapp L. Johnson argued for Respondents.
 Raymond H. Goettsch opened argument for Appellant.
 Andrea M. Gauthier, appearing for Amicus Curiae 21st Century
 Insurance, continued argument for Appellant.
 Mr. Johnson replied.
 Cause submitted.

S088368 The People, Respondent

v.

Susan Lee Russo, Appellant

Cause called. Jim Fahey argued for Appellant.

Jeffrey D. Firestone, Deputy Attorney General, argued for Respondent.

Mr. Fahey replied.

Cause submitted.

S027555 In re Andrew Rubin and Terrence Verson Scott on Contempt

The People, Respondent

v.

Alfredo R. Prieto, Appellant

Order to Show Cause re Contempt

Appearing: Andrew Tobin, in pro. per. and

Terence V. Scott, in pro. per.

Court recessed in memory of Associate Justice Ramona Godoy Perez of California Court of Appeal, Second Appellate District, Division Five.

The court reconvened at 1:30 p.m. this date pursuant to recess. Members of the Court and Officers present as first shown.

S084105 Manuel Torres et al., Appellants

v.

Parkhouse Tire Service et al., Respondents

Cause called. David B. Oberholtzer argued for Respondent Naas.

Richard F. Wolfe argued for Respondent Parkhouse Tire.

William Baker argued for Appellants.

Martina A. Silas, appearing for Amicus Curiae Torres continued argument for Appellant.

Mr. Oberholtzer replied.

Cause submitted.

S030416 The People, Respondent

v.

Sergio Ochoa, Appellant

Cause called. Conrad Peterman argued for Appellant.

Brad D. Levenson, Deputy Attorney General, argued for Respondent.

Mr. Peterman replied.

Cause submitted.

S016718 The People, Respondent

v.

Steven David Catlin, Appellant

Cause called. Horace N. Freeman argued for Appellant.

Stephen G. Herndon, Supervising Deputy Attorney General, argued for Respondent.

Mr. Freeman replied.

Cause submitted.

Court recessed until 9:00 a.m. Thursday, June 7, 2001.

S027555 In re Andrew E. Rubin and
Terence V. Scott on Contempt,

The People, Plaintiff,

v.

Alfredo Prieto, Defendant.

THE COURT

On June 16, 1992, in San Bernardino County Superior Court, defendant Alfredo Prieto was sentenced to death. On January 12, 1996, Attorneys Andrew E. Rubin and Terrence V. Scott were appointed to represent defendant Alfredo Prieto in his automatic appeal and any related habeas corpus proceedings. The record on appeal was certified on May 14, 1999, and included a reporter's transcript of 18,074 pages and a clerk's transcript of 4,246 pages. The court informed Rubin and Scott by letter dated May 14, 1999, that the appellant's opening brief was due on June 23, 1999. The

court thereafter granted requests for extensions of time to file appellant's opening brief on June 24, 1999, and September 2, 1999.

On March 15, 2000, we granted the People's "Motion for Correction of the Record on Appeal Following Superior Court Augmentation of the Record" and struck that portion of the record on appeal which incorporated the records of the cases of Prieto's codefendants. We also granted Rubin and Scott's request for an extension of time to file appellant's opening brief and extended the deadline for the brief "to and including May 15, 2000."

On June 12, 2000, we granted Rubin and Scott's fourth request for an extension of time to file the opening brief "to and including July 14, 2000," but stated in our order: "No further extensions of time are contemplated."

On July 20, 2000, we granted a fifth request for an extension of time to file the opening brief "to and including September 12, 2000," but stated in our order: "No further extensions of time will be granted."

On September 11, 2000, Rubin and Scott filed a sixth request for an extension of time to file the opening brief. On September 20, 2000, Rubin and Scott submitted a supplemental declaration as requested by the court. In the declaration, Rubin averred "that the brief should be filed before the end of the year."

On October 17, 2000, we granted the sixth request for an extension of time "[b]ased solely on the representation of counsel Andrew R. Rubin that he will file appellant's opening brief in this matter 'by the end of the year . . .'" Our order stated that "appellant's opening brief shall be served and filed on or before January 10, 2001." Our order further warned that "[i]f the brief is not filed by that date, the court will consider issuing an order directing appellant's counsel to show cause before this court, when the matter is ordered on calendar, why counsel should not be held in contempt of court and further payments suspended or other sanction imposed for his delay in the appellate process occasioned by the approximately 18-month extension of time thus far granted."

On or about December 20, 2000, Rubin and Scott filed a motion to decertify the record pursuant to rule 33.6 of the California Rules of Court and a request to suspend further proceedings pending our ruling on the motion. We denied the motion and request on January 10, 2001.

Rubin and Scott did not file the opening brief on or before

January 10, 2001. Instead, on January 10, 2001, Rubin and Scott filed their seventh request for an extension of time to file the opening brief. We denied the request on January 30, 2001. In the same order, we issued an order for Rubin and Scott to show cause before this court on April 3, 2001, “why they should not be held in contempt of court for the willful neglect of their duty to file the appellant’s opening brief in this case, which we previously ordered to be filed on or before January 10, 2001.” We also ordered Rubin and Scott to file a return on or before March 9, 2001. Rubin timely filed a return on March 9, 2001. Scott submitted a return and a motion for relief from default on March 16, 2001. We granted Scott’s motion for relief from default and filed his return on March 22, 2001.

Rubin and Scott appeared before the court on April 3, 2001, but they had not completed appellant’s opening brief and did not file the brief at the hearing. On April 3, 2001, we continued the order to show cause re contempt to June 2001, and ordered Rubin and Scott to complete appellant’s opening brief and lodge it with the court, along with a request for relief from default and for permission to file the brief, on or before May 18, 2001. Rubin and Scott lodged appellant’s opening brief and a request for relief from default and for permission to file the brief on May 18, 2001, as ordered. Rubin and Scott then appeared before the court on June 6, 2001, and they were afforded an opportunity to explain why they had not complied with the court’s October 17, 2000, order.

The court finds Rubin and Scott have not complied with the court’s October 17, 2000, order. The court also finds Rubin and Scott were aware of and had the ability to comply with that order, and that their failure to do so was willful. Willful failure to comply with an order of the court constitutes contempt. (*In re Grayson* (1997) 15 Cal.4th 792, 794; Code Civ. Proc., § 1209, subd. (a)(5).)

Rubin’s and Scott’s failure to comply with the October 17, 2000, order of this court is an act occurring within the immediate view and presence of the court within the meaning of Code of Civil Procedure section 1211, and constitutes a direct contempt. (*In re Grayson*, *supra*, 15 Cal.4th at p. 794.)

The court finds Andrew E. Rubin and Terrence V. Scott guilty of contempt of this court. Having been adjudged in contempt of the California Supreme Court, Andrew E. Rubin and Terrence V. Scott

are each ordered to pay a fine of \$1,000.

Pursuant to Business and Professions Code section 6086.7, the clerk is directed to notify the State Bar of this action by forwarding to the State Bar a copy of this judgment of contempt.

4th Dist. Kenneth Dale Jones, Petitioner
E029586 v.
Div. 2 Riverside County Superior Court, Respondent
S098077 People, Real Party in Interest
Application for stay and petition for review DENIED.

Orders were filed in the following matters extending the time within which to grant or deny a petition for review to and including the date indicated, or until review is either granted or denied:

A085327/S096905 People v. Lonnie E. Weathers – July 18, 2001.
A093885/S096904 In re Lonnie E. Weathers on Habeas Corpus – July 18, 2001.
B123192/S096700 FN Development Company et al. v. Paramar Partners et al. –
July 8, 2001.
C032002/S096761 People v. Michael Brown III et al. – July 13, 2001.
G027956/S096959 In re Rafael Anguiano on Habeas Corpus – July 19, 2001.
H019843/S096972 People v. Vu Dai Nguyen – July 17, 2001.
H020272/S096792 People v. Christopher Jason Dario Taylor – July 13, 2001.
H020311/S096699 Ajida Technologies Incorporated v. Roos Instruments
Incorporated – July 8, 2001.
H021559/S096793 In re Christopher Jason Dario Taylor – July 13, 2001.
S021602/S096887 In re Trung Xuan Nguyen – July 13, 2001.
H021959/S096973 In re Vu Dai Nguyen on Habeas Corpus – July 17, 2001.

S040527 People, Respondent

v.

Timothy DePriest, Appellant

On application of appellant and good cause appearing, it is ordered that the time to serve and file appellant's opening brief is extended to and including July 30, 2001.

S019697 People, Respondent

v.

Carman Lee Ward, Appellant

On application of appellant and good cause appearing, it is ordered that the time to serve and file appellant's opening brief is extended to and including August 3, 2001.

S096088 Whitmore Union Elementary School District, Appellant

v.

County of Shasta et al., Respondents

On application of respondents and good cause appearing, it is ordered that the time to serve and file respondents' opening brief on the merits is extended to and including July 16, 2001.

S016718 People, Respondent

v.

Steven D. Catlin, Appellant

Due to clerical error, the order filed in the above matter on June 1, 2001, granting appellant's request for 45 minutes for oral argument, is amended to reflect the correct case number.